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LABOR MANAGEMENT RACKETEERING ACT OF 1982

JULY 19 (legislative day, JULY 12), 1982.—Ordered to be printed

Mr. HATCH, from the Committee on Labor and Human Resources, submitted the following

REPORT

[To accompany S. 1785]

The Committee on Labor and Human Resources, to which was referred the bill (S. 1785) to increase the penalties for violations of the Taft-Hartley Act, to prohibit persons, upon their convictions of certain crimes, from holding offices in or certain positions related to labor organizations and employee benefit plans, and to clarify certain responsibilities of the Department of Labor, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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I. COMMITTEE AMENDMENT AS REPORTED

The Committee amendment provides:

That this Act may be referred to as the "Labor Management Racketeering Act of 1982".

SEC. 2. (a) Subsection (d) of section 302 of the Labor Management Relations Act, 1947 (29 U.S.C. 186) is amended to read as follows:

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"(d)(1) Any person who participates in a transaction involving a payment, loan, or delivery of money or other thing of value to a labor organization in payment of membership dues or to a joint labor-management trust fund as defined by clause (B) of the proviso to clause (5) of subsection (c) of this section or to a plant, area, or industry-wide labor-management committee that is received and used by such labor organization, trust fund, or committee, which transaction does not satisfy all the applicable requirements of subsections (c)(4) through (c)(9) of this section, and willfully and with intent to benefit himself or to benefit other persons he knows are not permitted to receive a payment, loan, money, or other thing of value under subsections (c)(4) through (c)(9) violates this subsection, shall, upon conviction thereof, be guilty of a felony and be subject to a fine of not more than $15,000, or imprisoned for not more than five years, or both; but if the value of the amount of money or thing of value involved in any violation of the provisions of this section does not exceed $1,000, such person shall be guilty of a misdemeanor and be subject to a fine of not more than $10,000, or imprisoned for not more than one year, or both.

"(2) Except for violations involving transactions covered by subsection (d)(1) of this section, any person who willfully violates this section shall, upon conviction thereof, be guilty of a felony and be subject to a fine of not more than $15,000, or imprisoned for not more than five years, or both, but if the value of the amount of money or thing of value involved in any violation of the provisions of this section does not exceed $1,000, such persons shall be guilty of a misdemeanor and be subject to a fine of not more than $10,000, or imprisoned for not more than one year, or both.".

(b) Subsection (e) of such section is amended to read as follows:

"(e) The district courts of the United States and the United States courts of the territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of Rule 65 of the Federal Rules of Civil Procedure (relating to notice to opposite party), over—

"(1) suits alleging a violation of this section brought by any person directly affected by the alleged violation, and

"(2) suits brought by the United States alleging that a transaction involving a payment, loan, or delivery of money or other thing of value to a labor organization in payment of membership dues or a joint labor-management trust fund as provided for in clause (B) of the proviso to clause (5) of subsection (c) of this section or to a plant, area, or industry-wide labor-management committee violates this section.

to restrain such violations without regard to the provisions of section 6 of the Clayton Act (15 U.S.C. 17), section 20 of

such Act (29 U.S.C. 52), and sections 1 through 15 of the Act entitled "An Act to amend the Judicial Code to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (29 U.S.C. 101–115).

SEC. 3. (a) So much of subsection (a) of section 411 of title 1 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1111) as follows "the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401)," is amended to read as follows: "any felony involving abuse or misuse of such person's labor organization or employee benefit plan positionor employment, or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

"(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, or representative in any capacity of any employee benefit plan,

"(2) as a consultant or adviser to an employee benefit plan, including but not limited to any entity whose activities are in whole or substantial part devoted to providing goods or services to any employee benefit plan, or

"(3) in any capacity that involves decisionmaking authority or custody or control of the moneys, funds, assets, or property of any employee benefit plan,

during or for the period of ten years after such conviction or after the end of such imprisonment, whichever is later, unless the sentencing court on the motion of the person convicted sets a lesser period of at least five years after the end of such imprisonment, whichever is later, and unless prior to the end of such period, in the case of a person so convicted or imprisoned (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the United States Parole Commission determines that such person's service in any capacity referred to in paragraphs (1) through (3) would not be contrary to the purposes of this title. Prior to making any such determination the Commission shall hold an administrative hearing and shall give notice to such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Commission's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan without a notice, hearing, and determination by such Parole Commission that such service would be inconsistent with the intention of this section.".

(b) Subsection (b) of such section is amended to read as follows:

"(b) Any person who intentionally violates this section shall be fined not more than $10,000 or imprisoned for not more than five years, or both.".

(c) Subsection (c) of such section is amended to read as follows:

"(c) For the purpose of this section:

"(1) A person shall be deemed to have been 'convicted' and under the disability of 'conviction' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

"(2) The term 'consultant' means any person who, for compensation, advises, or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

"(3) A period of parole shall not be considered as part of a period of imprisonment.".

(d) Such section is amended by adding at the end thereof the following:

"(d) Whenever any person—

"(1) by operation of this section, has been barred from office or other position in an employee benefit plan as a result of a conviction, and

"(2) has filed an appeal of that conviction,

any salary which would be otherwise due such person by virtue of such office or position, shall be placed in escrow by the individual or organization responsible for payment of such salary. Payment of such salary into escrow shall continue for the duration of the appeal or for the period of time during which such salary would be otherwise due, whichever period is shorter. Upon the final reversal of such person's conviction on appeal, the amounts in escrow shall be paid to such person. Upon the final sustaining of that person's conviction on appeal, the amounts in escrow shall be returned to the individual or organization responsible for payments of those amounts. Upon final reversal of such person's conviction, such person shall no longer be barred by this statute from assuming any position from which such person was previously barred.".

SEC. 4. (a) So much of subsection (a) of section 504 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 504) as follows "or a violation of title II or III of this Act" is amended to read as follows: "any felony involving abuse or misuse of such person's labor organization or employee benefit plan position or employment, or conspiracy to commit any such crimes, shall serve or be permitted to serve—

"(1) as a consultant or adviser to any labor organization,

"(2) as an officer, director, trustee, member of any executive board or similar governing body, business

agent, manager, organizer, employee, or representative in any capacity of any labor organization,

"(3) as a labor relations consultant or adviser to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent, or employee of any group or association of employers dealing with any labor organization, or in a position having specific collective bargaining authority or direct responsibility in the area of labor-management relations in any corporation or association engaged in an industry or activity affecting commerce,

"(4) in a position which entitles its occupant to a share of the proceeds of, or as an officer or executive or administrative employee of, any entity whose activities are in whole or substantial part devoted to providing goods or services to any labor organization, or

"(5) in any capacity that involves decisionmaking authority concerning, or decisionmaking authority over, or custody of, or control of the moneys, funds, assets, or property of any labor organization,

during or for the period of ten years after such conviction or after the end of such imprisonment, whichever is later, unless the sentencing court on the motion of the person convicted sets a lesser period of at least five years after such conviction or after the end of such imprisonment, whichever is later, and unless prior to the end of such period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the United States Parole Commission determines that such person's service in any capacity referred to in clauses (1) through (5) would not be contrary to the purposes of this Act. Prior to making any such determination the Commission shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Commission's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this subsection.".

(b) Subsection (b) of such section is amended to read as follows:

"(b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than five years, or both.".

(c) Subsection (c) of such section is amended to read as follows:

"(c) for the purpose of this section:

"(1) A person shall be deemed to have been 'convicted' and under the disability of 'conviction' from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

"(2) A period of parole shall not be considered as part of a period of imprisonment.".

(d) Such section 504 is amended by adding at the end thereof the following:

"(d) Whenever any person—

"(1) by operation of this section, has been barred from office or other position in a labor organization or employee benefit plan as a result of a conviction, and

"(2) has filed an appeal of that conviction.

any salary which would be otherwise due such person by virtue of such office or position, shall be placed in escrow by the individual employer or organization responsible for payment of such salary. Payment of such salary into escrow shall continue for the duration of the appeal or for the period of time during which such salary would be otherwise due, whichever period is shorter. Upon the final reversal of such person's conviction on appeal, the amounts in escrow shall be paid to such person. Upon the final sustaining of such person's conviction on appeal, the amounts in escrow shall be returned to the individual employer or organization responsible for payments of those amounts. Upon final reversal of such person's conviction, such person shall no longer be barred by this statute from assuming any position from which such person was previously barred.".

SEC. 5. (a) The first paragraph of section 506 of title 1 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1136) is amended by striking out "in order" and inserting in lieu thereof the following:

"(a) Coordination With Other Agencies and Departments.—In order".

(b) Such section is amended by adding at the end thereof the following new subection:

"(b) Responsibility for Detecting and Investigating Civil and Criminal Violations of Employee Retirement Income Security Act and Related Federal Laws.—The Secretary shall have the responsibility and authority to detect and investigate and refer, where appropriate, civil and criminal violations related to the provisions of this title and other related Federal laws, including the detection, investigation, and appropriate referrals of related violations of title 18 of the United States Code. Nothing in this subsection shall be construed to preclude other appropriate Federal agencies from detecting and investigating civil and criminal violations of this title and other related Federal laws.".

(c) The title of such section is amended to read as follows:

"Coordination and responsibility of agencies enforcing Employee Retirement Income Security Act and related Federal laws".

II. Summary of the Bill

PURPOSE

The purpose of this bill is to afford greater protection for unions and employee benefit plans from corrupt union and management officials by increasing the penalties for violating portions of three statutes—the Labor Management Relations Act of 1947, known as the Taft-Hartley Act; the Employee Retirement Income Security Act of 1974, known as "ERISA"; and the Labor-Management Reporting and Disclosure Act of 1959, known as the Landrum-Griffin Act. The bill is a direct outgrowth of public hearings held before the Permanent Subcommittee on Investigations.

TAFT-HARTLEY ACT

Currently, Section 302 of the Taft-Hartley Act prohibits, among other things, the buying and selling of labor peace. Violation of this provision, however, is only a misdemeanor subject to a fine of up to $10,000 and imprisonment of no more than one year or both. S. 1785 raises this prohibition to a felony where the money or item involved exceeds $1.000 subject to a fine of not more than $15,000 and imprisonment for not more than five years or both.

In making this change, the Committee was aware of the technical nature of some of the prohibitions found in Section 302. Recognizing that it is possible for a person, to be incorrect in his belief that his conduct is lawful, the Committee made special provisions for violations of Section 302(c)(4) through (9) of the Act. (29 U.S.C. 186(c)(4)(9)). In these instances, it must be shown that a person not only violated the section, but that he did so willfully and with intent to benefit himself or any other person not permitted to receive such benefit.

S. 1785 also clarifies jurisdiction of the district courts of the United States in light of the substantive changes made to the Taft-Hartley Act.

ERISA

Currently, ERISA contains a list of crimes which lead to the debarment of an individual from holding a position of responsibility with an employee benefit plan. S. 1785 would add to this list of prohibited crimes any felony involving the abuse or misuse of a position with an employee benefit plan.

Moreover, under ERISA, an individual convicted of an act prohibited in the statute is currently barred from holding a position with an employee benefit plan or serving as a consultant to such plan for five years after either the date of conviction or the end of imprisonment. S. 1785 sets the disqualification period at ten years but allows the trial court judge to reduce this to no less than five years. The bill also expands the list of positions to which disqualification applies.

The hearings also revealed that union officials convicted of various crimes were permitted to retain their union offices and their control over the assets of employee pension funds while their convictions were being appealed, a period which has exceeded two years. S. 1785 would end this practice by changing the date of conviction under ERISA to the date of the trial court judgment rather than the date of last appeal. To protect an individual during the appeals process, however, the bill also provides that all salary due such a person will be paid into an escrow account, and such sums would be turned over to the official if his conviction is overturned.

Finally, S. 1785 makes it clear that the Secretary of Labor has not only the authority but also the responsibility for the detection, investigation and referral, where appropriate, of alleged violations of the relevant portions of ERISA and other related Federal laws.

LANDRUM-GRIFFIN

S. 1785 makes several changes in Landrum-Griffin similar to those made in ERISA concerning the length of the debarment period, the definition of the date of conviction, and the payment of salary to an escrow account during the appeal process.

The bill also expands the list of positions which a person convicted under the statute is barred from holding. The hearings revealed that union officials were not the only individuals interested in or benefiting from the buying and selling of labor peace. Testimony revealed that some employer representatives also were willing participants in this prohibited activity. Therefore, S. 1785 would expand the list of barred positions to include any position having specific collective bargaining authority or direct responsibility in the area of labor management relations with a corporation or association.

III. Background and Need for Legislation

Senate bill S. 1785, the Labor-Management Racketeering Act is the direct outgrowth of public hearings on waterfront corruption held by the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs in February, 1981. These hearings were the latest in a series of congressional hearings beginning 20 years ago when Senator John L. McClellan chaired the Permanent Subcommittee on Investigations. Indeed the McClellan hearings followed the work of the Kefauver Crime Committee of the early 1950's and its successor, the Subcommittee on Waterfront Racketeering and Port Security of the Senate Commerce Committee.

The Kefauver committee touched on waterfront union corruption and the Waterfront Subcommittee followed with an extensive investigation in 1953. In 1975, more than 20 years later, the Justice Department launched a nationwide investigation of racketeering on the waterfront. This inquiry resulted in the criminal convictions of more than 100 high level union officials and shipping company executives. These persons were charged with a variety of offenses ranging from violations of the Taft-Hartley Act to extortion payoffs, kickbacks, threats, intimidation, obstruction of justice, and income tax evasion.

During the latest series of hearings, the Subcommittee heard of payoffs to insure the award of work contracts, to maintain contracts already awarded, to insure labor peace, to allow management circumvention of labor strikes, to prevent the filing of fraudulent workers' compensation claims, to expand business activity to new ports, and to afford certain companies the freedom to circumvent union contract requirements with impunity. Witnesses testified that the large network of U.S. ports are controlled by organized crime and charged that payoffs occur with such regularity that they have become a part of normal business operating costs.

These same allegations were repeated at legislative hearings on S. 1785 conducted by the Senate Subcommittee on Labor of the Committee on Labor and Human Resources on February 3, 1982. One problem developed at the hearings was the fact that convicted union officials remain in union office until all appeals from their convictions have been exhausted, usually long after the original conviction. This bill would rid labor organizations and employee benefit plans of the influence of those convicted individuals by providing that they shall be barred from union or benefit plan office immediately after their conviction, that is, on the day of the guilty verdict, not as of the much later final appeal. In order to be as fair as possible, the bill provides that the salary which a convicted official would receive shall be placed in escrow during his appeals and will be available if the conviction is finally reversed.

In stressing the need for this provision, the Labor Department in its testimony noted that the appeals process may consume a lengthy period of time, often up to two years, allowing individuals convicted of robbery, burglary, fraud, or embezzlement to continue to exercise great influence over benefit plans and labor unions and their funds in their formal capacities for months, even years, until the appeals process is exhausted. One official was convicted of embezzling funds from six labor organizations and funds. While these matters were on appeal, he remained in a number of positions until the convictions were eventually sustained. He was later convicted of additional offenses occurring in the appeals period, during which an estimated $1 million was taken. The Department indicated that this was not an isolated case.

The Committee concluded that the five-year period of disqualification is often too short a period of time to prevent convicted officials from effectively reasserting their influence over a labor union or benefit plan. The Labor Department testified that this relatively short period of time has sometimes encouraged disqualified officials to stand by, sometimes in clerical or custodial posts, often exerting substantial direct or indirect influence with the expectation that they will be able to assume or resume a position. For example, one official, who had been convicted of embezzlement, was employed as a chauffer for the period of disqualification, only to be appointed as an organizer exercising great official authority when the five-year period ended. Consequently, the list of positions prohibited has been expanded to include labor union employees performing exclusively clerical or custodial duties so that such positions are not available as a standby for convicted officials.

Violations of the disqualification provisions of ERISA and LMRDA will now be graded as felonies rather than misdemeanors. The increase in the grading of these offenses is necessary to protect union members and plan beneficiaries and participants from the influence of convicted individuals.

S. 1785 would also clarify the responsibility of the Secretary of Labor to investigate civil and criminal violations of the Federal pension laws and related statutes. This bill reaffirms the responsibility of the Labor Department for the detection and investigation of criminal violations.

IV. History of S. 1785

S. 1785, a bill to increase the penalties for violations of the Taft-Hartley Act, to prohibit persons, upon their conviction of certain crimes, from holding office in or certain positions related to labor organizations and employee benefit plans, and to clarify certain responsibilities of the Department of Labor, was introduced by Senator Nunn on October 28, 1981, and was referred to the Committee on Labor and Human Resources and its Subcommittee on Labor. (An earlier version, S. 1163, was introduced by Senator Nunn on May 12, 1981, and referred to Labor and Human Resources).

V. Hearing

A public oversight hearing was conducted by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs on February 17, 18, 19, 25, 26, and 27, 1981. The following individuals provided testimony:

Arevalo, Frank owner of Twin Terminal Services, Inc., accompanied by Max Engle, attorney.
Baldwin, Greg, investigator, Permanent Subcommittee on Investigations.
Barone, George, president, ILA Local 1922, accompanied by David Rosen, attorney.
Barrett, Jack, special agent, Federal Bureau of Investigation, accompanied by Sean McWeeney, Section Chief of Organized Crime, Federal Bureau of Investigation.
Bufalino, Russell, accompanied by Charles Gelso, attorney.
Clemente Michael, accompanied by Ms. P. Costello, attorney.
Degnan, Hon., John J., attorney general, New Jersey; Lt. John Liddy, and trooper Robert Delaney; accompanied by Ed. Steir, director, Department of Criminal Justice, N.J. and Clinton L. Pagano, New Jersey State Police.
Delaney, Robert, detective, New Jersey State Police.
Devorkin, Michael, former assistant U.S. attorney, New York.
DiBella, Thomas, Jr., accompanied by Santo Sgarlato, attorney.
Fiske, Robert, former U.S. attorney, New York.
Fiumara, Tino, accompanied by Mr. McAlevy, attorney.
Fortuin, M. Thomas, attorney for Mr. Anthony Salerno.
Freeh, Louis J., special agent, Federal Bureau of Investigation, accompanied by Dana Caro.
Glenn Fry, investigator, Permanent Subcommittee on Investigations.

Gleason, Sr., Thomas W., president ILA, accompanied by Ernest Hammer, attorney.
Graybill, Dean, attorney for Mr. Anthony Salerno.
Harrington, Neal L., chief executive officer, Harrington & Co., Inc., accompanied by Louis Stinson, Jr., attorney.
Havens, George R., investigator, State attorney's office and Howard Rasmussen, executive director, Citizens Commission of Miami.
Levin, Michael S., attorney in charge, Miami Organized Crime Strike Force.
Levine, Alan, former assistant U.S. attorney, New York.
McWeeney, Sean, Chief in Charge of Organized Crime, Federal Bureau of Investigation.
Maria, Raymond I., investigator, Permanent Subcommittee on Investigations.
Morelli, Anthony, past president, All Port Services, Inc., accompanied by Hal Myerson, attorney.
O'Hearn, Walter, president, McGrath Services Corp.
Rago, Douglas, vice president, ILA, Local 1922, accompanied by James Hogan, attorney.
Rosen, David, accompanied by Robert H. Schwartz, attorney.
Roth, Dr. Irwin, accompanied by Benjamin Fishburne, attorney.
Schneck, George, special agent, Federal Bureau of Investigation.
Scoppetta, Nicholas, commissioner, Waterfront Commission of N.Y. Harbor, accompanied by Henry N. Luther III, Commissioner; Gerald Lally, General Counsel, and Paul Kelley, Director of Law.
Steinberg, Marty, minority chief counsel, Senate Permanent Subcommittee on Investigations.
Teitelbaum, Joseph, president, Rivert Shipping Corp., accompanied by Thomas Hearst, Esq., and Hamilton Fox, attorneys.
Ungar, Harold, Esq., firm of Williams & Connolly.
Wagner, George, protected witness.
Webster, Hon. William H., Director, Federal Bureau of Investigation.

A public hearing on S. 1785 was conducted by the Subcommittee on Labor on February 3, 1982. The following individuals provided testimony:

Rudman, Hon. Warren, a U.S. Senator from the State of New Hampshire.
Nunn, Hon. Sam, a U.S. Senator from the State of Georgia.
Ryan, T. Timothy, Solicitor, Department of Labor.
Jensen, D. Lowell, Assistant Attorney General, Criminal Division, Department of Justice, accompanied by David Margolis, Chief of Organized Crime and Racketeering Section, Criminal Division.

VI. Committee Views

A series of hearings by the Permanent Subcommittee on Investigations in February of 1981 revealed that while unions and businesses which engage in collective bargaining generally operate in accord with the law, Congressional efforts to end the domination by organized crime and other criminal elements of some unions have not been entirely successful. Testimony received at the hearings also demonstrated

that current federal prohibitions and penalties designed to protect the legitimacy of labor relations have, in certain respects, proved to be inadequate. Based on the recommendations of the Permanent Subcommittee on Investigations, this Committee decided to take a series of carefully considered steps to protect the position of the union leaders and members as well as those employers who wish to run their organizations in strict accord with the law's requirements. It is this Committee's view that S. 1785 strengthens federal prohibitions and penalties and will end the abuse of existing federal labor laws.

Section 2 of this bill amends subsections (d) and (e) of 29 U.S.C. section 186. The amendment to subsection (d) raises certain violations of section 186 from misdemeanors to felonies; and also increases the maximum penalty for any violation denominated as a felony from 1 year of imprisonment and a fine of $10,000 or both to five years of imprisonment and a fine of $15,000 or both. The Committee considers these changes proper given the seriousness of the conduct prohibited in section 186—the payoff or bribe of union officials or employees for abuse of their union office.

At the same time, the Committee recognizes that a wide range of violations of section 186 are not payoffs or bribes but simply fail to meet the detailed requirements for certain of the exemptions under section 186(c). Consequently, the amendment to section 186(d) tightens the requirements for a criminal conviction under section 186(c)(4) through (9) in order to draw a clear line between those violations properly deemed criminal wrongs—payoffs and bribes—and those violations properly deemed to be civil wrongs.

To that end, this amendment distinguishes from other transactions within the ambit of subsections (a) and (b) of section 186 those involving a payment, loan, or delivery of money or other thing of value to a labor organization in payment of membership dues, to a joint labor-management trust (as defined by clause (B) of the proviso to clause (5) of subsection (c)) or to a plant, area or industry-wide labor management committee. In the latter category, where the thing of value is received and used by the labor organization, trust fund, or committee, violations of section 186 may occur simply because of a failure to satisfy one of the technical requirements for an exemption stated in subsections (c)(4) through (c)(9). Accordingly, subsection (d)(1) of S. 1785 provides that a participant in a transaction that violates section 186 because it fails to meet the applicable requirements for an exemption under subsections (c)(4) through (c)(9) will be subject to criminal sanction only if the violation of section 186 is willful and "with intent to benefit himself or to benefit other persons whom he knows are not permitted to receive such payment, loan, money, or other thing of value under subsections (c)(4) through (c)(9)."

Where such a specific intent can be shown, the transaction is in the nature of a payoff or a bribe and thus constitutes conduct of the type that should be subject to criminal sanction. Where no such intent can be established, the violation does not involve the self-dealing and abuse of position on which criminal punishment should, in the Committee's judgment, be based.

The requirements for a criminal prosecution with respect to all other transactions that are proscribed by subsections (a) and (b) of

section 186 and are not exempt und r subsection (c) are set forth in subsection (d)(2) of S. 1785. Such proscribed transactions are not likely to be innocently motivated. Rather, the very fact of the payment generally shows the attributes of self-dealing and abuse of position that justify criminal penalty. Therefore, the Committee determined not to include a specific intent requirement for prosecutions under subsection (d)(2). The mens rea requirement for prosecutions under subsection (d)(2) will continue to be "willfully."

Subsection (e) provides civil jurisdiction in the federal district courts over suits by the United States alleging violations of section 186 which involve "a payment, loan or delivery of money or other thing of value to a labor organization in payment of membership dues or a joint labor-management trust fund as provided for in clause (B) of the proviso to clause (5) of subsection (c) of section 186 or a plant area or industry-wide labor management committee," and which fail to meet the requirements for an exemption under subsections (c)(4) through (c)(9). It is the Committee's opinion that the injunctive remedy available through subsection (e), as amended, achieves the objective of providing for compliance with the statute without penalizing the individuals or organizations that have simply failed to satisfy the detailed requirements for an exemption under subsections (c)(4) through (c)(9). Moreover, the amendment to subsection (e) also provides civil jurisdiction in the federal district courts over suits to restrain violations of section 186 "brought by any person directly affected by the alleged violation."

2. Sections 3 and 4 of the bill amends 29 U.S.C. sections 1111 and 504, respectively. In general, these amendments change present law by: (1) adding certain offenses as grounds for disqualification from holding certain positions; (2) adding to the positions to which such disqualification pertains; (3) extending maximum periods of disqualification; and (4) increasing the maximum prison term for violations of the disqualification provisions.

Section 3 of the bill amends 29 U.S.C. section 1111(a) by adding the following ground for disqualification from certain positions related to employee benefit plans: "any felony involving abuse or misuse of such person's labor organization or employee benefit plan position or employment." Section 4 of the bill amends 29 U.S.C. section 504(a) by adding the quoted language as a ground for disqualification from certain positions related to labor organizations. This ground for disqualification is meant to apply to those persons who are convicted of felonies which are committed while they are holding a position in a labor organization or with an employee benefit plan or while employed by such organizations and which involve the seeking or obtaining of illegal gain at the expense of the members of the labor organization or the beneficiaries of the employee benefit plan. The Committee's intent is to ensure that any person who feloneously aggrandizes himself or others to the detriment of those he has the obligation to serve is removed from his position. It is also the Committee's intent that grounds for disqualification on the current list of disqualifying crimes specified in sections 504 or 1111 should continue unchanged.

Testimony received by the Committee also made it clear that the list of positions to which disqualification applies must be expanded. Examples were given of convicted officials who were disqualified from

retaining their previous positions but were kept on the union payroll in other positions, such as chauffeur. These individuals were immediately moved back into positions of power once the disqualification period expired. Similarly, individuals convicted and disqualified under ERISA were then hired as consultants or advisors to the very plan in which they were disqualified from holding a position. Moreover, union officials were not the only ones benefiting from or interested in the buying and selling of labor peace. Testimony revealed that some employer representatives were willing participants in prohibited activity.

Therefore, the bill also expands the list of positions to which disqualification applies. Section 3 adds the following positions to the list in section 1111: "a representative in any capacity of any employee benefit plan"; "a consultant or advisor to an employee benefit plan, including but not limited to any entity whose activities are in whole or in substantial part devoted to providing goods or services to any employee benefit plan"; "any capacity that involves decision-making authority over or custody or control of the moneys, funds, assets or property of any employee benefit plan".

Section 4 adds the following positions to the list in section 504: "a consultant or advisor to any labor organization"; a "representative in any capacity of any labor organization"; "a labor relations consultant or advisor . . . or a position having specific collective bargaining authority or direct responsibility in the area of labor-management relations in any corporation or association engaged in an industry or activity affecting commerce"; "a position which entitles its occupant to a share of the proceeds of, or as an officer or executive or administrative employee of, any entity whose activities are in whole or substantial part devoted to providing goods or services to any labor organization"; "in any capacity that involves decision-making authority over or custody or control of the moneys, funds, assets, or property of any labor organization."

Both sections 3 and 4 increase the maximum disqualification period from five to ten years. Testimony received by this Committee indicated that in many cases the present five-year maximum has proven to be an ineffective deterrent. It is the Committee's view that a ten year ban appropriately applied would provide a sufficient period for a union or benefit plan to rid itself of the influence of a convicted official.

At the same time, the Committee recognizes that the ten year ban might lead to inequities if some provision was not made for judicial discretion when handling individual cases. Therefore, Sections 3 and 4 of S. 1785 set a ten year bar from the positions specified unless on the convicted individual's motion the sentencing court sets a lesser period of at least five years. The question of the proper disqualification period between these extremes is entrusted to the trial judge's informed discretion. The requirement that the convicted individual raise this issue is not intended to tilt the balance in one direction or the other, but to preclude any contention that the ten year period does not apply in situations in which the convicted individual does not raise the question of what the appropriate debarment period should be in his case.

Sections 3 and 4 of the bill increase the maximum term of imprisonment for intentional violations of section 1111 and for willful violations of section 504, respectively, from one year to five years.

Sections 3 and 4 of the bill also amend Sections 1111 and 504, respectively to change the operative date of disqualification to the date of the judgment of the trial court, regardless of whether an appeal is taken. Currently, the operative date is either the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event. The hearings revealed that this alternative standard permitted union officials, who had been convicted of disqualifying crimes such as fraud and embezzlement, to retain their union offices or positions of control over the assets of employee pension funds while their convictions were being appealed, a period which sometimes exceeded two years. Testimony received at the hearings indicated that due to this existing standard, some convicted officials were able to continue to engage in prohibited activity during the appeals process. It is this abuse of our judicial system that the Committee intends to end.

When considering these amendments, the Committee recognized that inherent in our judicial system is the presumption that all persons are presumed innocent until there is a finding by a court of law. Once a conviction is obtained, however, the presumption of innocence disappears. Moreover, it is the Committee's view that these amendments, when coupled with the provisions concerning payment of salaries to an escrow account during the appeals process, reflect an equitable weighing of two competing interests—the interests of the convicted official during appeal and the interests of the members of the union or the participants in an employee benefit plan.

Section 5 of the bill makes it clear that the Secretary of Labor has not only the authority but also the responsibility for the detection, investigation and referral of alleged civil and criminal violations of the relevant portions of ERISA and other federal statutes. The hearings established clearly that the Department of Labor had taken the position that it has no such responsibility in criminal matters, and it is the opinion of this Committee that this failure has made it necessary to state more explicitly both the Secretary's authority and Congress' intent that this authority be exercised. It is not the Committee's intent, however, that Section 5 be interpreted as granting the Secretary of Labor with exclusive authority for such detection, investigation, and referral. The Section specifically states that nothing in it may be construed to preclude other appropriate federal agencies from detecting and investigating civil and criminal violations of ERISA or other federal labor laws. Finally, the term "other related federal statutes" is meant to include, but not be limited to, statutes relating to theft from embezzlement from or bribery to influence the operation of an employee benefit plan.

VII. Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, D.C., June 7, 1982.

Hon. Orrin G. Hatch,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed

S. 1785, a bill to increase the penalties for violations of the Taft-Hartley Act, to prohibit persons, upon their conviction of certain crimes, from holding offices in or certain positions related to labor organizations and employee benefit plans, and to clarify certain responsibilities of the Department of Labor, as ordered reported by the Senate Committee on Labor and Human Resources, May 27, 1982.

Although this bill prohibits certain individuals from holding federal jobs, it does not preclude other persons from being hired in their place and therefore it is not expected to alter federal employment levels. In addition, it is not anticipated that it will result in additional administrative costs. For these reasons, it is expected that no significant additional cost to the government will be incurred as a result of enactment of this legislation.

Sincerely,

ALICE M. RIVLIN, *Director.*

The Committee agrees with the CBO cost estimate.

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C., June 1, 1982.

Dr. ALICE M. RIVLIN,
Director, Congressional Budget Office, House Annex 2, Room H2-450, Washington, D.C.

DEAR DR. RIVLIN: Enclosed is a copy of S. 1785, the Labor Management Racketeering Act of 1981. This bill was reported on May 27th by the Committee on Labor and Human Resources.

Please have your staff cost out the impact of this bill on federal Budget Outlays and Authority.

Time is of the essence and I would appreciate your response by Tuesday, June 8, 1982. If your staff has any questions, please call Rick Lawson or Chuck Carroll of my staff at 224-5546.

Your prompt attention and response to this request will be greatly appreciated.

With kindest regards.

Sincerely,

DON NICKLES,
Chairman, Subcommittee on Labor.

Enclosure.

VIII. REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the following statement of the regulatory impact of S. 1785 is made:

A. Estimated number of individuals and businesses regulated and their groups or classifications: S. 1785 impacts a broad segment of persons engaged in individual relations activities in this country. The exact number of such persons and their corresponding businesses is not known to this Committee.

B. Impact of the act on personal privacy: Current law already prohibits the same type of activities prohibited by S. 1785. There is, therefore, no impact on personal privacy.

C. Additional paperwork, time and costs: S. 1785 requires certain employers to establish escrow accounts for individuals who may later claim such funds. This has no impact on the Department of Labor.

The bill also grants the Labor Department the authority to detect and investigate certain civil and criminal violations. Civil violations currently fall within the jurisdiction of the Department of Labor. It is the Committee's view that the criminal responsibility will be a mere extension of the civil activities already pursued. The exact extent of any additional paperwork required by S. 1785 is unknown to the Committee.

D. Economic impact: It is the Committee's view that the only economic impact will be in businesses which must establish the required escrow accounts. Since these accounts are only for individuals convicted of certain crimes and the number of such future convictions is not clear, the Committee does not know the full economic impact of S. 1785.

IX. Tabulation of Votes Cast in Committee

The motion favorably to report the bill to the Senate was passed unanimously by voice of the Committee.

X. Section-by-Section Analysis of S. 1785

Section 2 of the bill amends section 302(d) of the Taft-Hartley Act to provide that willful violations involving labor bribery or a payoff of an amount in excess of $1,000 shall be a felony punishable by a fine of not more than $15,000 or imprisonment for not more than five years or both. Crimes involving amounts of less than $1,000 would continue to be misdemeanors subject to the current penalties of $10,000 and/or 1 year imprisonment.

S. 1785 grants special treatment to transactions covered by subsections 302(c)(4) through (9). These subsections contain exceptions, often technical in nature, to the prohibitions contained in sections 302(a) and (b). Thus a person can violate a prohibition of sections 302(a) and (b) even though he proceeded in the belief that his conduct fell within the excepted behavior of sections 302(c)(4) through (9). Therefore, S. 1785 adds to the "willful" requirements for this behavior the additional element that such conduct be "with intent to benefit himself or to benefit other persons whom he knows are not permitted to receive such payment, loan, money or other thing of value under subsection (c)(4) through (c)(9)."

A violation of Taft-Hartley sections 302(c)(4) through (9) which is "willful" and with the requisite "intent" and which involves an amount in excess of $1,000 is a felony punishable by a fine of not more than $15,000 or imprisonment for not more than five years or both. If the amount involved is $1,000 or less, then violations remain misdemeanors subject to a fine of not more than $10,000 and/or 1 year imprisonment.

Section 2 of S. 1785 also amends Taft-Hartley section 302(e). The amendments provide civil jurisdiction in the United States district courts over suits brought by the United States alleging specific viola-

tions of Taft-Hartley and over suits brought by any person directly affected by an alleged violation of section 302. It preserves the jurisdiction of such courts to restrain violations under the Act.

Section 3 amends section 411(a) of ERISA which prohibits persons convicted of certain crimes from serving in listed positions with an employee benefit plan. Added to this list of crimes are those offenses relating to abuse or misuse of such person's employee benefit plan position. The categories of positions affected by the disbarment provisions also are enlarged.

Current disbarment is for 5 years. Section 3 makes this time period a maximum of 10 years and a minimum of 5 years to be set by the sentencing court.

Section 3 also amends section 411(b) of ERISA by increasing the penalties for intentional violations of this section from 1 year to 5 years.

Section 3 amends section 411(c) of ERISA to change the definition of the word "convicted." Current law defines this as the date of the trial court judgment or the final appeal thereof, whichever is later. S. 1785 changes the date to the date of the trial court judgment, regardless of appeals.

Section 3 also adds a new section 411(d) to ERISA which provides that any salary otherwise payable to a person convicted by a trial court shall be placed in escrow pending final disposition of any appeal.

Section 4 amends section 504(a) of Landrum-Griffin by adding to the list of crimes in the same manner that Section 3 extended them under ERISA. The same disbarment provisions as contained in Section 3 are added as well.

Section 4 amends section 504(b) of Landrum-Griffin to increase the penalty for willful violations of that section from imprisonment for not more than 1 year to not more than 5 years.

Section 4 amends section 504(c) of Landrum-Griffin by changing the definition of the term "convicted" in the same manner as in section 411(c) of ERISA as discussed in Section 3 above.

Section 4 adds new section 504(d) to Landrum-Griffin to provide the same escrow provisions added to ERISA and discussed in Section 3.

Section 5 amends section 506 of ERISA by changing the headings and adding a new subsection (b). This new subsection delineates the responsibility and authority of the Department of Labor to investigate and refer criminal activities for prosecution.

XI. Changes in Existing Law

In compliance with rule XXVI, paragraph 12 of the Standard Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 29, UNITED STATES CODE

* * * * * * *

CHAPTER 7—LABOR-MANAGEMENT RELATIONS

* * * * * * *

SUBCHAPTER IV—LIABILITIES OF AND RESTRICTIONS ON LABOR AND MANAGEMENT

* * * * * * *

SEC. 105. * * *

Sec. 186. Restrictions on financial transactions

PAYMENT OR LENDING, ETC., OF MONEY BY EMPLOYER OR AGENT TO EMPLOYEES, REPRESENTATIVES, OR LABOR ORGANIZATIONS

(a)–(c) * * *

PENALTY FOR VIOLATIONS

[(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.]

(d)(1) Any person who participates in a transaction involving a payment, loan, or delivery of money or other thing of value to a labor organization in payment of membership dues or to a joint labor-management trust fund as defined by clause (B) of the proviso to clause (5) of subsection (c) of this section or to a plant, area or industry-wide labor-management committee that is received and used by such labor organization, trust fund or committee, which transaction does not satisfy all the applicable requirements of subsections (c)(4) through (c)(9) of this section, and willfully and with intent to benefit himself or to benefit other persons he knows are not permitted to receive a payment, loan, money or other thing of value under subsections (c)(4) through (c)(9), violates this subsection, shall, upon conviction thereof, be guilty of a felony and be subject to a fine of not more than $15,000, or imprisoned for not more than five years, or both; but if the value of the amount of money or thing of value involved in any violation of the provisions of this section does not exceed $1,000, such person shall be guilty of a misdemeanor and be subject to a fine of not more than $10,000, or imprisoned for not more than one year, or both.

(2) Except for violations involving transactions covered by subsection (d)(1) of this section, any person who willfully violates this section shall, upon conviction thereof, be guilty of a felony and be subject to a fine of not more than $15,000, or imprisoned for not more than five years, or both; but if the value of the amount of money or thing of value involved in any violation of the provisions of this section does

not exceed $1,000, such person shall be guilty of a misdemeanor and be subject to a fine of not more than $10,000, or imprisoned for not more than one year, or both.

JURISDICTION OF COURTS

[(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 381 of Title 28 (relating to notice to opposite party)) to restrain violations of this section, without regard to the provisions of section 17 of Title 15 and section 52 of this title, and the provisions of chapter 6 of this title.]

(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of Rule 65 of the Federal Rules of Civil Procedure, (relating to notice to opposite party), over (1) suits alleging a violation of this section brought by any person directly affected by the alleged violation and (2) suits brought by the United States alleging that a transaction involving a payment, loan or delivery of money or other thing of value to a labor organization in payment of membership dues or a joint labor-management trust fund as provided for in clause (B) of the proviso to clause (5) of subsection (c) of this section or to a plant area or industry-wide labor-management committee violates this section to restrain such violations without regard to the provisions of sections 6 of the Clayton Act (15 U.S.C. 17) section 20 of such Act (29 U.S.C. 52), and sections 1 through 15 of the Act entitled "An Act to amend the Judicial Code to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 1932 (U.S.C., title 29, secs. 101–115).

* * * * * * *

CHAPTER 18—EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM

SUBCHAPTER I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

SECS. 1001–1110.* * *

Sec. 1111. Persons prohibited from holding certain positions

CONVICTION OR IMPROVEMENT

(a) No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of Federal or State law involving substances defined in section 802(6) of Title 21, murder, rape, kidnaping, perjury, assault with intent to kill, any crime described in section 80a–9(a)(1) of Title 15, a violation of any provision of this Act, a violation of section 186 of Title 29, a violation of chapter 63 of Title 18, a violation of section 874, 1927, 1503, 1505, 1506, 1510, 1951, or 1954 of Title 18, a violation of the Labor-Management Reporting and Disclosure Act of 1959, or [conspiracy to commit any such crimes or attempt to commit any such

crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

[(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan, or

[(2) as a consultant to any employee benefit plan,

[during or for five years after such conviction or after the end of such imprisonment, whichever is the later, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in paragraph (1) or (2) would not be contrary to the purposes of this subchapter. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No person shall knowingly permit any other person to serve in any capacity referred to in paragraph (1) or (2) in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee, of any employee benefit plan or as a consultant to any employee benefit plan without a notice, hearing, and determination by such Board of Parole that such service would be inconsistent with the intention of this section.] *any felony involving abuse or misuse of such person's labor organization or employee benefit plan position or employment; or conspiracy to commit any such crimes; or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—*

(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, or repreesntative in any capacity of any employee benefit plan,

(2) as a consultant or adviser to an employee benefit plan, including but not limited to any entity whose activities are in whole or substantial part devoted to providing goods or services to any employee benefit plan, or

(3) in any capacity that involves decisionmaking authority or custody or control of the moneys, funds, asscts, or property of any employee benefit plan during or for the period of ten years after such conviction or after the end of such imprisonment whichever is later unless the sentencing court on the motion of the person convicted sets a lesser period of at least five years after such conviction or after the end of such imprisonment whichever is later, and unless prior to the end of such period, in the case of a person so convicted or imprisoned (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored. or (B) the United States Parole Commission determines that such person's service in any capacity referred to in paragraphs (1) through (3) would not be contrary to the purposes of this title. Prior to making any such determination the Commission shall hold an administrative hearing and shall give notice to such

proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Commission's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee, of any employee benefit plan or as a consultant to any employee benefit plan without a notice, hearing, and determination by such Parole Commission that such service would be inconsistent with the intention of this section.

PENALTY

(b) Any person who intentionally violates this section shall be fined not more than $10,000 or imprisoned for not more than [one year,] *five years*, or both.

DEFINITIONS

(c) For the purposes of this section:

(1) A person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial [court or the date of the final sustaining of such judgment on appeal, whichever is the later event.] *court, regardless of whether that judgment remains under appeal.*

(2) The term "consultant" means any person who, for compensation, advises or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

(3) A period of parole shall not be considered as part of a period of imprisonment.

(d) Whenever any person, (1) by operation of this section, has been barred from office or other position in an employee benefit plan as a result of a conviction, and (2) has filed an appeal of that conviction, any salary which would be otherwise due such person by virtue of such office or position, shall be placed in escrow by the individual or organization responsible for payment of such salary. Payment of such salary into escrow shall continue for the duration of the appeal or for the period of time during which such salary would be otherwise due, whichever period is shorter. Upon the final reversal of said person's conviction on appeal, the amounts in escrow shall be paid to such person. Upon the final sustaining of that person's conviction on appeal, the amounts in escrow shall be returned to the individual or organization responsible for payments of those amounts. Upon final reversal of such person's conviction, such person shall no longer be barred by this statute from assuming any position from which such person was previously barred.

SECS. 1112–1135. * * *

CHAPTER 11—LABOR-MANAGEMENT REPORTING AND DISCLOSURE PROCEDURE

SUBCHAPTER VI—SAFEGUARDS FOR LABOR ORGANIZATIONS

SECS. 501–503. * * *

Sec. 504. Prohibition against certain persons holding office; violations and penalties

(a) No person who is or has been a member of the Communist Party or who has been convicted of, or served any part of a prison term resulting from his conviction of, robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, or a violation of subchapter III or IV of this [chapter, or conspiracy to commit any such crimes, shall serve—

[(1) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, or other employee (other than as an employee performing exclusively clerical or custodial duties) of any labor organization, or

[(2) as a labor relations consultant to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent, or employee (other than as an employee performing exclusively clerical or custodial duties) of any group or association of employers dealing with any labor organization,

during or for five years after the termination of his membership in the Communist Party, or for five years after such conviction or after the end of such imprisonment, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in clause (1) or (2) would not be contrary to the purposes of this chapter. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No labor organization or officer thereof shall knowingly permit any person to assume or hold any office or paid position in violation of this subsection.]

chapter or any felony involving abuse of misuse of such person's labor organization or employee benefit plan position or employment; or conspiracy to commit any such crimes, shall serve or be permitted to serve—

(1) as a consultant or adviser to any labor organization,

(2) as an officer, director, trustee, member of any executive board or similar governing body, business agent, manager, organizer, employee, or representative in any capacity of any labor organization,

(3) as a labor relations consultant or adviser to a person engaged in an industry or activity affecting commerce, or as an officer, director, agent, or employee of any group or association of employers dealing with any labor organization, or in a position having specific collective bargaining authority or direct responsibility in the area of labor management relations in any corporation or association engaged in an industry or activity affecting commerce.

(4) in a position which entitles its occupants to a share of the proceeds of, or as an officer or executive or administrative employee of, any entity whose activities are in whole or substantial part devoted to providing goods or services to any labor organization, or

(5) in any capacity that involves decisionmaking authority concerning, or discisionmaking authority over, or custody of, or control of the moneys, funds, assets, or property of any labor organization during or for the period of ten years after such conviction or after the end of such imprisonment whichever is later unless the sentencing court on the motion of the person convicted sets a lesser period of at least five years after such conviction or after the end of such imprisonment whichever is later, and unless prior to the end of such period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the United States Parole Commission determines that such person's service in any capacity referred to in clauses (1) through (5) would not be contrary to the purposes of this Act. Prior to making any such determination the Commission shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the Secretary of Labor and to State, county, and Federal prosecuting officials in the jurisdictions in which such person was convicted. The Commission's determination in any such proceeding shall be final. No person shall knowingly hire, retain, employ, or otherwise place any other person to serve in any capacity in violation of this subsection.

(b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than [one year,] *five years*, or both.

[(c) For the purposes of this section, any person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event, regardless of whether such conviction occurred before or after September 14, 1959.].

(c) For the purpose of this section:

(1) A person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

(2) A period of parole shall not be considered as part of a period of imprisonment.

(d) Whenever any person (1) by operation of this section, has been barred from office or other position in a labor organization or employee benefit plan as a result of a conviction, and (2) upon has filed

an appeal of that conviction, any salary which would be otherwise due such person by virtue of such office or position, shall be placed in escrow by the individual employer or organization responsible for payment of such salary. Payment of such salary into escrow shall continue for the duration of the appeal or for the period of time during which such salary would be otherwise due, whichever period is shorter. Upon the final reversal of such person's conviction on appeal, the amounts in escrow shall be paid to such person. Upon the final sustaining of such person's conviction on appeal, the amounts in escrow shall be returned to the individual employer or organization responsible for payments of those amounts. Upon final reversal of such person's conviction, such person shall no longer be barred by this statute from assuming any position from which such person was previously barred.

Sec. 1136. [Other agencies and departments] *Coordination and responsibility of agencies enforcing Employee Retirement Income Security Act and related Federal laws*

(*a*) *COORDINATION WITH OTHER AGENCIES AND DEPARTMENTS.*—In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this subchapter and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize on a reimbursable or other basis, the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this subchapter. The Attorney General or his representative shall receive from the Secretary for appropriate action such evidence developed in the performance of his functions under this subchapter as may be found to warrant consideration for criminal prosecution under the provisions of this subchapter or other Federal law.

(*b*) *RESPONSIBILITY FOR DETECTING AND INVESTIGATING CIVIL AND CRIMINAL VIOLATIONS OF EMPLOYEE RETIREMENT INCOME SECURITY ACT AND RELATED FEDERAL LAWS.--The Secretary shall have the responsibilty and authority to detect, investigate and refer, where appropriate civil and criminal violations related to the provisions of this title and other related Federal laws, including the detection, investigation, and appropriate referrals of related violations of title 18 of the United States Code. Nothing in this subsection shall be construed to preclude other appropriate Federal agencies from detecting and investigating civil and criminal violations of this title and other related Federal laws.*

(c) The title of such section is amended to read as follows:

Coordination and responsibility of agencies enforcing Employee Retirement Income Security Act and related Federal laws.

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